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Re Accidental Failure of Suit Statute

I am a medical malpractice defense attorney and am here to speak in opposition to the proposed amendment to the Accidental Failure of Suit Statute.

The Accidental Failure of Suit Statute was enacted in the very early 1900's to rescue cases where there was a "technicality" that resulted in the dismissal of a legitimate case.

While that statute has been applied liberally in practice, it has NEVER been interpreted as without limits. The proposed amendment would have the effect of making EVERY case dismissed under 52-190a revivable within a year - regardless of the circumstances that led to the dismissal. Not only would it condone lawyer malfeasance, it would effectively extend the SOL for filing lawsuits against doctors for an additional year.

It is important to recall that when the current COM bill was enacted in 2005, plaintiff's negotiated for and received, as part of that compromise legislation, an automatic 90 day extension of the SOL to sue a MD. Although this extension was intended for situations when counsel was retained on the eve of the expiration of the SOL, the 90 day extension is now pursued as a matter of routine practice by every plaintiff's counsel in the state, effectively extending the SOL for 3 months.

This proposed amendment would effectively give plaintiff's an ADDITIONAL one year extension of the SOL to sue doctors. As troubling as it was for the SOL to be extended for 90 days in 2005 - for another year to be added to that - especially when it derives from "egregious conduct or inexcusable neglect" by the lawyer - is incomprehensible to the medical community - and should be unconscionable to the legal community.

Why is it OK to make doctors accountable, but not lawyers? If a lawyer is negligent and does not follow the clearly defined rules- that are very clear and already highly forgiving -the client has recourse against the lawyer. Lawyers have malpractice insurance, just like doctors. As between the doctor and the lawyer - why should the negligent lawyer win out - especially when their conduct is egregious?! I wonder what the citizens of our state would prefer.

This dynamic is the height of irony- the trial lawyers endeavor to make it easier to sue

doctors. No one would dare suggest that if a doctor is negligent, he should get a reprieve. Under the proposed amendment, a lawyer's "egregious conduct or excusable neglect" is OK and deserving of forgiveness. I hope that the self-serving nature of this is apparent to the committee.

This statute, as it currently exists, already protects lawyers who make mistakes from claims of legal malpractice – doctors get no such protection. A lawyer can commit "excusable neglect", under the current law and get a "do-over". Our doctors do not get away with "excusable neglect". The concept of endorsing a law that would reward lawyers for "inexcusable neglect" or "egregious conduct" is offensive to me as a practicing attorney and I hope that it is to you. If this bill is passed, it will go down as the bill that endorsed "egregious conduct and inexcusable neglect by lawyers – hardly something that the citizens of the State of CT will appreciate.

Please reject this bill.

Sincerely,

/s/

Joyce A. Lagnese

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